

SPEECH
OF
HON. THOMAS L. CLINGMAN,
OF
NORTH CAROLINA,

ON
THE RESOLUTIONS REPORTED BY THE SELECT COMMITTEE TO INVESTIGATE
THE ALLEGED ASSAULT UPON SENATOR SUMNER BY MR. BROOKS;

DELIVERED IN THE HOUSE OF REPRESENTATIVES JULY 9, 1856.

Resolved, That PRESTON S. BROOKS be, and he is forthwith, expelled from this House as a representative from the State of South Carolina.

Resolved, That this House hereby declares its disapprobation of the said acts of HENRY A. EDMUNDSTON and LAWRENCE M. KEITT in regard to the said assault;

the pending question being on the amendment of Mr. COBB, of Georgia, to strike out the resolutions and insert, in lieu thereof, the following:

Resolved, That this House has no jurisdiction over the assault alleged to have been committed by the Hon. PRESTON S. BROOKS, a member of this House from the State of South Carolina, upon the Hon. CHARLES SUMNER, a senator from the State of Massachusetts; and therefore deem it improper to express any opinion on the subject.

Mr. CLINGMAN said:

Mr. SPEAKER: I was desirous of offering a few observations to the House upon this question at the time when it first came before us. No opportunity to debate it, however, was afforded; but the previous question was moved. You, sir, may remember that I made an effort to say something on the merits of the case. I should then—for my mind was operated on by the excitement of the occasion—I should then, perhaps, have said one or two things that I do not desire to present upon this occasion. I find that it is necessary for those of us who voted against the proposition of the gentleman from Ohio [Mr. CAMPBELL] to say something for the country, since we are held up before it as approving the assault of the gentleman from South Carolina, and as justifying it, because of the votes we then gave against the resolution under which the committee was raised. There has been, Mr. Speaker, since that time, a great deal of excitement gotten up on this question. I intend to-day, in the remarks which I expect to make, to endeavor so to speak as not to add to the excitement, either in the House or in the country. I intend to speak, as far as I can, without doing injustice to anybody, but simply with the purpose of presenting briefly those views which operated upon my mind, and which, perhaps, influenced the minds of other gentlemen who voted with me upon that occasion.

But, sir, in order that gentlemen may not misunderstand the position which I mean to occupy, when I speak mildly and moderately upon this question, I must allude to a matter preliminary in its character by way of explanation. Sir, it was said, a few weeks ago, and very shortly after this occurrence—whether truly or not I do not know—that it was reported all over this city that certain gentlemen

who were opposed to me in politics, and who sympathized with Mr. SUMNER, intended, by speeches of extreme violence, to provoke, if possible, other attacks from us, and thus increase the excitement. This was so generally circulated as to have been known to everybody here; and a prominent republican or free-soil paper in New York (the *Courier and Enquirer*) had an article, which was sent to us all, in which that course seemed to be marked out. Now, without undertaking to say that it is the purpose of any gentleman upon this floor, by violent speeches, to provoke others to engage in personal rencontres, nevertheless I feel it right to allude to that matter, and I say to all such gentlemen, if there be such—I hope there are in fact none such—but if any gentleman desires a personal difficulty, I, as a benevolent, good-natured man, hope he will be gratified. If there are none such, why, then, all the better. When I was a boy, in my part of the country, sometimes, on occasions of public gatherings, a man would go out and say that he was “electioneering for a fight,” and such a man generally succeeded in picking up a fight somewhere on those occasions; but if he did fight, and was whipped, or if he even whipped somebody else, it being a “free fight,” it was supposed that the matter concerned the parties alone, and that no one else had a right to complain.

Now, sir, if on the present occasion any gentleman desires to get into a difficulty, and is gratified in his wishes, I hope we shall not have a great howl in any part of the country over it. I hope that it will be looked upon as a mere personal matter for the gratification of the gentlemen who engage in it. And as I am a peaceable man, and never like to get into difficulties, so I do not take much pains to get out of their way; and as, during this hot weather, I feel very languid and indisposed to exertion, I shall not take especial pains to get out of the way of anybody who may be in search of such a thing. While I do not intend to utter anything to offend any gentleman who does not want to be offended, still, if any one upon this floor—I limit the remark to members of the House, not extending it to outsiders at all—wants a difficulty with me on this subject, I am perfectly willing for him to take it for granted that I have insulted him, and am responsible in any manner that he desires; but if he does not desire it, then not for the world would I offend him. But if this is to be a matter of mere abuse and vituperation, I wash my hands of it; I do not intend to embark in anything of that kind. I regard fighting as objectionable in many respects, but quarrelling and denunciation are vastly more intolerable. When the British made war on China, the Chinese went into the field armed with gongs, and made a terrible noise, to induce the English, doubtless, to leave their territory. Now, if this is to be a mere Chinese gong business—an effort, in other words, to see who can make the loudest and most disagreeable noise—I will keep clear of it, and, if necessary, put my fingers in my ears to escape its annoyance.

And now let me call the attention of the House to the case under consideration. As I have already said, it is one which has produced a very great and remarkable excitement in the country. This, Mr. Speaker, may well be a matter of surprise to me; for though I have not been here a great many years as a member, yet about a dozen

collisions on the floors of the two houses have occurred in my time, and they were much stronger cases than this, because they took place while the houses were in session. Why, I recollect that, during my first Congress, Mr. White, of Kentucky, and Mr. Rathbun, of New York, had a set-to just near where I now stand, during a period of great excitement, and when politics ran very high, with reference to a personally offensive charge against Mr. Clay; but the House never adopted any proceedings against those members, and it made no noise in the country. I recollect, too, that, in the next Congress, a gentleman from Georgia and another from Tennessee had a struggle over on the other side of the chamber, and several large desks were overturned, and the gentlemen apologized for disturbing our deliberations; but the House did not raise any committee or censure them in any wise. Also, towards the close of that session, whilst the House was in session, at a late hour in the night, during a sort of triangular fight, a gentleman from Alabama struck a gentleman from the Northwest over the head with a cane, and cut it so that it bled very freely; but this did not cause the raising of any committee, or cause any other proceeding against the parties. I remember, too, going into the Senate that night, near one or two o'clock—and I must say here that these disturbances occur more frequently during the last night of the session, when gentlemen, having been up for two or three days and nights successively, have gotten sleepy, and those who are in the habit of drinking spirits drink a little from patriotic motives, just to keep awake, so as to be able to attend to the public business—but, as I was saying, I went into the Senate chamber that night, and a senator asked me what we had been doing in the House. I replied that we had just had a little fight there among three of the members. “Why,” said he, with an air of exultation, “we have had two in the Senate to-night!” and it was true. It was on that occasion that a senator from Pennsylvania was standing up making a speech, and a senator from Mississippi, not liking his speech, went up and struck him in the face, or attempted so to strike him, and they had a regular set-to. The Senate, however, did not raise any committee to take charge of the subject.

During the next Congress, two members from North Carolina had a collision just behind where I am standing; but really no notice was taken of it, except by a little knocking on the Speaker’s desk, and a request on his part that members would resume their seats and keep order.

A VOICE. Who were the members?

Mr. CLINGMAN. I do not give the names of the parties in any of these cases, because, if I did, I might have to refer to gentlemen who are now upon the floor, and thereby render it necessary for them to make explanations, and thus divert the attention of the House from the present case.

Sir, I recollect also that during the Congress of 1852, two gentlemen from Mississippi had a fight over the way; they were rather stout gentlemen and made quite a “muss,” as they say in New York; but nobody talked then of raising a committee. Why, even during the last Congress I think we had two difficulties of this sort. A gentleman from Maine had a fight with some gentleman from the West; but it all

ended without any action, or even notice, on the part of the House. On another occasion two gentlemen from Tennessee had a violent altercation, and one of them jumped over several desks, and the other pulled out a pistol, or, at any rate, a pistol fell upon the floor near him; but no steps were taken against them. And it is a little remarkable that the gentleman who jumped over the desks was a candidate for an office in this House at the beginning of this session, and was elected on the first ballot by a very large vote. If you look at that vote, I expect you will find that every single gentleman who voted for the raising of this committee actually voted for him.

Now, that shows you what was thought of assaults and batteries here on the floor. There is no doubt that this was an interruption of the business of the House—that it was a breach of privilege; and yet a large majority of the present House, including all those, I think, who sustain the action against Mr. Brooks, attached so little weight to it, that, when they had the whole United States to pick from, they selected that very gentleman to make a Clerk of the House of. There have also been several duels, without anybody being punished for them. It is true, that when the Cilley duel occurred, owing to the fact that there was a great deal of political excitement at that time, and that it was supposed that Mr. Clay was connected with it, and some capital would be made against him and his party, the House did get up a committee, and had debates; but the matter was laid on the table, and instead, a very foolish law was passed on the subject of duelling. During the first Congress that I was here, a duel occurred between a member from Alabama and a member from North Carolina. A member from New York (PRESTON KING) did then introduce a resolution; but, after a little debate, the House rejected it by laying it on the table. The last duel occurred in 1851, between a gentleman from Alabama and one from my own State, and the House took no notice of it at all.

Then as to outside difficulties, such as this one which the gentleman from Ohio has now brought before us in the present case, we have had almost innumerable cases of them. During the Congress before the last, while the House was in session, and just by the door of the post office, a member from New York beat the Postmaster General, or some other member of the cabinet, and nobody took any notice of it. Why, there was a man shot in the door of this hall some years ago while there was a fight going on between two members in the House; but no one was punished for it. A friend beside me suggests that the House did raise a committee in that case. I believe it did; but that was all.

I might allude to many other circumstances of this kind. My object is to let the House see that this occurrence, as compared with similar ones, is sought to be greatly magnified. Now, the utmost that could be said of this is, that it was a breach of privilege of the House and of the Senate. Well, all these instances that I have cited were clearly and confessedly such, because done in the presence of the houses when actually in session; and yet none of them were followed by punishment. I really cannot undertake to give a history of all these disturbances, there seem to have been so many of them; but I am reminded

of another fight that occurred in the post office between two members while the House was in session during the last Congress. But there is a great effort to make political capital out of this case. That is obvious to every one. Here is a certain party calling itself republican, which thinks, perhaps, that with it the sands of life are running a little low ; and hence its friends want to get up a great excitement and clamor in the country, in the hope of acquiring strength ; and therefore I shall call the attention of the House briefly to the facts of the case and the principles involved, to show that there is nothing in the world to justify that excitement.

It is admitted that the gentleman from South Carolina went into the Senate chamber after that body had adjourned, and committed an assault and battery on a senator. They charge, in the first place, that that was a breach of privilege of the Senate.

The able argument of the gentleman from Georgia [Mr. COBB] rests the general question of privilege, I think, upon proper grounds. I do not mean to follow in his footsteps, as to the ground occupied by him. I say, however, that, in the first place, it cannot with truth be charged as a breach of privilege of the Senate, because the Senate was not at the time in session ; and if it was not in session, then it was not such an existing body as to be subject to such a wrong.

There is a clear distinction between the Senate and the individual senators of which it may be composed when called together. It is only a Senate when in actual session, and has not, at other times, any of the rights conferred on it as a Senate. This proposition is so clear that it has only to be stated, I think, to be acquiesced in.

In the second place, it is said that it was a wrong, on the ground that it was committed in the Senate chamber, and a great deal of stress is laid upon that point in certain quarters. But, we know that, when the Senate is not in session, any citizen can go into the Senate chamber just as he can go into the rotundo or along Pennsylvania avenue ; and an assault and battery committed there is no more than an assault and battery committed anywhere else. We have, politically speaking, no sacred places in this country. There are halls for doing public business, and when a legislative body or a court is in session, any interruption at that time is a breach of privilege ; but there is no sanctity of place according to our American ideas.

An assault in a court-house while the court is in session, is a contempt of court. But nobody ever pretended that a fight there while the court was not in session, was anything more than a fight elsewhere ; and I may add, in passing, that in fact an English chief justice has declared that even an assault and battery upon a judge, while walking in the streets, is not a breach of the privileges of the court. I will, however, proceed to another point.

It is argued, in the third place, that if this was not a breach of the privileges of the Senate, it was a breach of the privileges of a senator. Well, sir, let us look at that for a single moment. I will not argue it at length, because this point has been already well argued in the report of the gentleman from Georgia, [Mr. COBB.] In the first place, it is said that no senator can be called to account for words spoken in debate, in

any other place. What does that mean? You and I know that these words are a mere copy of an old British statute, made to protect members of Parliament from being sued for slander; because a member of Parliament was sued for slander for words spoken in debate, and had to pay heavy damages. They therefore passed that statute, and we copied it. That is the plain and obvious meaning of it. It is to protect members and senators from being harassed by civil actions, or indictments for libels. The gentleman from Ohio asks, "Are not the persons of the people's representatives to be protected?" Certainly they are; but so is the person of every citizen in this country. The law is presumed to be sufficient to protect every man. A senator has no advantages in that respect over anybody else. We are all entitled to the protection of the law—the humblest citizen as much as the senator. There are no privileged classes in this country—nothing in the constitution, or in our American system, to support such a claim as is now put forward.

The notion which some persons have adopted, as to the sacredness of the persons of senators, is a sort of Brahminical idea. I say Brahminical, because in India, where despotism has flourished from time immemorial, and presents its most debasing features, a Brahmin's person is held to be sacred; and if he commits the greatest crime his person cannot be touched. If he is guilty even of treason the government dare not punish him in his body, but can only send him away. That system illustrates what is meant by the peculiar privileges and sacredness of person of a senator, as claimed by the abolitionists and some others whom they have carried away for a time under the recent excitement. Sir, I repudiate the idea. It is unworthy of the age and of the country in which we live. All men are entitled to the protection of the law as to their persons, but none to any peculiar privileges. I hold, therefore, sir, that there is nothing in that clause at all which bears upon the question under discussion. But supposing that I am wrong in my opinion, still the facts are not sufficient to make the case claimed in the report. Let us take the report's own statement of the facts, and it proves conclusively that the assault did not grow out of words spoken in debate. Sir, the words of that senator, as spoken in the Senate, did not cause the assault in question.

It is not contended that the gentleman from South Carolina heard the words as spoken in the Senate; nor would he in fact have made the assault for them as spoken. The report of the majority shows the facts to be different. Why was it committed? The words of Mr. Brooks show the cause. "Sir," said he to Mr. SUMNER, "I have read your speech with great care," &c.; "and I have come to punish you for it." The assault occurred because of the *publication* made by the senator from Massachusetts; not for words spoken in debate. The whole evidence goes to show that it was for the *publication*. Well, is he protected in any way for that? Why, not at all. In England, from whence we copied this provision of the constitution, it has been repeatedly decided that, if a member of Parliament, or anybody else, prints his speech, and it is libellous, he is not protected. Our own courts have made similar decisions in this country. It, therefore,

turns out that that gentleman printed and published what was offensive; and any one aggrieved might have brought an action against him for damages, or indicted him for the libel. His personal senatorial privileges would not have availed him at all, and do not meet the case admitted to have been made. As he has no right or peculiar privilege under the constitution in this respect, of course he stands just on the footing of any other man who publishes a gross libel. He, therefore, can be looked upon in no other light than the attitude of any person who should publish or write offensive things. This position is fully established by the facts set out in the report, and needs only to be stated to be evident.

But, again, it is said that, at the time Mr. SUMNER was assailed, he was at his desk directing and franking off his speech. But there would seem to be a peculiar fitness and justice in his being taken just in the fact, and punished while in the act of sending off and diffusing his libellous publication. It is contended, however, that he was in the line of his duty, &c. So he would have been if writing in the same way in his room, or going to or from the Capitol, or to one of the departments on business. Undoubtedly, the person of a senator ought to be protected when doing his proper business. So, however, ought the farmer and mechanic in their business, likewise. Their occupations are just as important to the well-being of the country as the duties of legislators. The persons engaged in them all, as well as other citizens, have an equal right to be protected from assaults; but the senator has no higher claim than the others.

But there is another circumstance which has been handled a good deal to the prejudice of my friend from South Carolina. I am not undertaking to defend him, so far as to say that his act was right in itself, in a legal sense. I admit that it was a breach of the law; and the gentleman has been indicted and punished for it in the courts, as the law provides. But, nevertheless, my object is to show that there is nothing in the case which ought to induce the House to take cognizance of it, or to excite the country. It is said that the gentleman from South Carolina did not give sufficient notice to the senator from Massachusetts. There is a great deal said on that point to create a prejudice in the public mind.

Well, sir, I do not know how much is to be considered sufficient notice in such cases. I have heard of a good many cases of assault and battery, and I do not, at this time, recollect any one where more notice was given than in this case. What would be sufficient notice for one man would not be sufficient notice for another, perhaps. If a gentleman bearing the same relations to another as the gentleman from South Carolina bore to the senator from Massachusetts had gone to him and told him, after such a preliminary statement as was made, that he intended to punish him for his speech, I would consider that to be notice enough to most men of ordinary courage and promptness. I have known men to attempt to cane others for offences or insult, and have a regular set-to; and very probably the assailant would be worsted. I will say this, in justice to the gentleman from South Carolina, that it sufficiently appears, I think, that, after his speech, he

in the first instance gave purposely a slight blow with the small end of his cane, which, in fact, alone he used during the whole occurrence, and that Mr. Sumner was on his feet before any second blow was given. Of course, the gentleman from South Carolina did not want to give so much notice as would enable the gentleman from Massachusetts to get out of the way, or have the gentleman from South Carolina bound to keep the peace; at the same time he gave, certainly, more notice than is usually given in these cases. But perhaps the House will say that in this case the notice was not sufficient. Now, I submit that, if this position is to be taken by the House, it should first determine how much notice is necessary. To condemn the gentleman from South Carolina now on that ground is very much in the nature of passing an *ex post facto* law. It is to hold him responsible for the violation of a rule which has not been adopted. I am free to confess that I very much prefer that, if assaults and batteries are to occur, the parties should have an equal chance.

There is nothing more mortifying to a brave man than to be assailed at a disadvantage, where he has not an equal chance to repel the assault. If that be the fact in the case of the senator from Massachusetts, I sympathize with him; but if, on the contrary, he would have made no effort to defend himself or repel the assault, then I say it matters not whether the notice was long or short; it is merely a question how much personal suffering he was compelled to endure, and that is a question for the courts to decide. If the gentleman from South Carolina assailed without provocation, then the courts should punish him. If he had provocation, but was excessive in the injuries inflicted, then the punishment should be suited to the aggravation of the offence. The courts have taken cognizance of the matter by indictment, and, if the senator desires it, he can bring his action likewise for damages. If the gentleman from Massachusetts is not satisfied with the redress given him by law, then I know that I do no more than justice to my friend from South Carolina when I say that he will be gratified to give him an even chance in any mode that that gentleman would suggest; but if he does not choose to avail himself of that opportunity, he has a similar right to make an assault himself. These are his remedies: First, the indictment already determined; secondly, a civil action for damages; thirdly, a challenge; and, fourthly, an attack on his assailant.

These I take to be sufficient, without any action of this House.

I have no more to say upon this branch of the subject. I will now advert to what I conceive to be the most interesting and important subject involved in this case. I know that education, manner of life, and associations, as well as mental peculiarities, cause persons to differ in their feelings and judgments in relation to occurrences of this kind. Still, I venture to say, that nearly every man—I will not say every man—will agree with me, that there may be cases of vituperation and calumny so outrageous as, under certain circumstances, to justify an assault and battery. In a country where there is liberty of speech and liberty of the press there is very apt to be licentiousness in both. Sir, I wish to be distinctly understood that I am in favor of liberty of

speech and of liberty of the press. I put it upon the same ground that I put the right of liberty of motion. Any man in this country has the right to move about as he pleases; but if he treads upon my toes I have the right to throw him off. A man has the right to move his arm as he pleases; but if he moves it so as to strike me violently I have the right to resent the blow by force. In the same manner liberty of speech and of the press may be exercised; but if a man carries it to licentiousness, so as to do great wrong to others, he should be held responsible.

When upon this subject I avail myself of the authority of perhaps the most distinguished man ever born in Massachusetts, and one of the greatest men born in any country—a no less distinguished man than Benjamin Franklin. Every gentleman knows that he was a cool, calm, sagacious, and philosophic man. And, sir, late in life, when his sun was past its meridian, during the first year of Washington's administration, defending freedom of speech and of the press, expressed himself in this language. I read from the second volume of the works of Franklin, by Sparks, and from an article under the head of "Political Economy," dated September, 1789.

After speaking of the abuses of the liberty of the press, and the necessity of some safeguard or corrective, he says:

"But I have been at a loss to imagine any that may not be construed an infringement of the sacred *liberty of the press*. At length, however, I think I have found one that, instead of diminishing general liberty, shall augment it; which is by restoring to the people a species of liberty of which they have been deprived by our laws—I mean the *liberty of the cudgel*. In the rude state of society prior to the existence of laws, if one man gave another ill language the affronted person would return it by a box on the ear, and, if repeated, by a good drubbing, and this without offending against any law. But now the right of making such return is denied, and they are punished as breaches of the peace, while the right of abusing seems to remain in full force, the law made against it being rendered inefficual by the *liberty of the press*.

"My proposal, then, is to leave the liberty of the press untouched, to be exercised in its full extent, force, and vigor; but to permit the *liberty of the cudgel* to go with it *pari passu*. Thus, my fellow-citizens, if an impudent writer attacks your reputation, dearer to you perhaps than your life, and puts his name to the charge, you may go to him as openly and break his head. If he conceals himself behind the printer, and you can nevertheless discover who he is, you may in like manner waylay him in the night, attack him behind, and give him a good drubbing.

"If, however, it should be thought that this proposal of mine may disturb the public peace, I would then humbly recommend to our legislators to take up the consideration of both liberties—that of the *press* and that of the *cudgel*—and by an explicit law make their extent and limits; and, at the same time that they secure the person of a citizen from *assaults*, they would likewise provide for the security of his *reputation*."

Sir, I stand with Franklin upon this ground. Every offence that can exist ought to be punished in some way or other. Most men will avow that their characters are dearer to them than their persons, or even their lives. Every one will admit that there is no adequate punishment provided for offences against character—certainly none by the laws. And if the doctrines of the report of the gentleman from Ohio [Mr. CAMPBELL] are adopted, it results that there is to be no punishment whatever for offences of this kind when committed by senators.

I maintain, sir, this great proposition: that, in accordance with the system of the universe, and the laws of Providence, there should be adequate punishment for each offence. This is equally true as respects the moral, the physical, and the organic laws, as exhibited to us in the world around us, and explained in Revelation. I might, if it were necessary, substantiate this view by innumerable instances. The ob-

ject of governments and of society is to provide a sufficient punishment for every wrong done to the citizen. But, from necessity, it leaves him, in many instances, the right of redress in his own hands. I further affirm that, upon the doctrines of the report of the majority, there can be no remedy whatever against assaults upon the character of the citizen, however gross, wanton, and malicious they may be, if made by a senator. Even as against licentious attacks from the press, no adequate remedy has as yet been provided by law; and if left solely to legal proceedings, the character of the purest and most innocent man or woman is liable to be utterly ruined.

Gentlemen need not tell me that the force of public opinion is sufficient to correct the evil. Suppose, for example, a man steals your horse; you may tell him, forsooth, that he will lose his character by stealing; that he will be excluded from all good society; that he will be tabooed and lose the respect of the community; but will this be a sufficient check? He will care nothing for it, because the class of men who commit such offences do not care for public opinion. Upon the same principle, those men who indulge in vituperation and calumny, and delight to vilify other people, thereby clearly show themselves to be dead to all sense of shame, and hence care nothing for public opinion. If they did, of course they would not indulge in such practices. If a dog barks at me, and I strike or kick him, you might say to me that if I did not like his barking, I ought to be content with barking back at him. If a man, standing in a ditch, would throw dirt at those passing by, he might say, if beaten, that it was wrong, and that others should be content with throwing back mud on him. So those men who vilify other people would doubtless say, if it were left to their wishes, that all who were assailed by them, should be content with replies in abusive language. By this mode of conducting the contest, they would suffer nothing; because, being engaged in an occupation suitable to their gross tastes, and insensible to shame, of course they would suffer nothing, and would, on the contrary, have the malicious and mean gratification of seeing honorable and sensitive men degraded to their own level. Such wrong-doers are, therefore, only to be corrected and restrained by the application of the "*cudgel*;" by bringing to bear on them, in other words, a punishment which they can feel. No one expects to induce a lazy horse to pull by telling him that it is his duty to do it, or to correct a vicious dog by reading to him the ten commandments. So I maintain that you have a moral right to use such applications to common vilifiers and calumniators as they will acknowledge and feel the force of. This has been the practice of the world in all ages, and I insist that it rests on sound principles. I would act on it, under some circumstances, myself, and I justify morally any other man who resorts to it. I admit that our laws are made differently in this District and in my own State. If a man vilifies another grossly and he is beaten, in my State, the judgment of the court is that he be fined one sixpence. Over the line, in Georgia, the jury would take the words into account and acquit him. But in every instance the community would morally justify or excuse the act. And you will find, in every case, that where a man is grossly insulted, and beats

the one who insulted him, men will say that, though he has violated the law, he was excusable for it, and the courts punish him lightly. On the other hand, if he acts without just provocation, the courts will punish him severely. I hold, then, that the only effective way now known to reach men of this sort is the one to which I have referred.

Mr. Speaker, I dislike to characterize Mr. SUMNER's speech, for several reasons. In the first place, I do not like to assail personally anybody, or to seem to speak offensively of a member of either house, if I can avoid so doing. In fact, I never have been called to account for an offensive remark towards any member during my service here. In the second place, I dislike to refer in terms of severity to one who is understood to be a non-combatant. I feel differently about one who might call me to account; there is something not disagreeably exciting sometimes in that. In the third place, I am especially averse to attacking any man who has been assailed by another, and failed to make any defence. Lastly, sir, it is reported—whether truly or not seems to be doubted—that Mr. SUMNER has not yet entirely recovered. There are two opposite stories as to this point, and the public will find out which is true after a while.

Nevertheless, that gentleman stands in an attitude now of a man who has brought an action for slander, or rather he is like a man who has brought an action for damages for an assault and battery. His character and conduct, then, come necessarily to be reviewed. In that way I am obliged to allude to his speech, well knowing that political opponents will profess not to see the difference between his position and that of other members, whom it would not be right for me to assail. And, again: while describing his speech, I have a difficulty to encounter which is embarrassing.

If I should characterize that gentleman's speech fairly and truly, as a judge charging a jury would have to characterize it, I must adopt a language and manner more like Cicero's second philippic against Anthony, than anything else I can think of. I stand before the public—if I shall attempt to do justice to that speech as I look on it, and as I suppose the whole country looks on it, for I have heard but one opinion about it—I stand in the attitude of a man who seems to be assailing and denouncing somebody, and I regret to be placed in any such position. I will, therefore, pass over it as lightly as I can, to do anything like justice to the gentleman from South Carolina. It is agreed by almost everybody, that the speech of Mr. SUMNER is the most offensive and scurrilous ever heard in either house of Congress. I have no doubt you may, by looking through the debates, find here and there a phrase as bad, perhaps, or nearly as bad, as any one used in that speech. He has, however, made a general collection, seemingly, of all the gross and offensive expressions accessible to him, written them out, and occupied two days in their delivery. We, of the South, have been accustomed to this sort of denunciation and abuse for a long while. I know that northern gentlemen cannot appreciate, perhaps, our feelings in this respect.

Let me put this case to them: Suppose any gentleman here from the North lived directly on the street, and some knave or other should stand

opposite the house and vilify him and his family with all manner of vituperative epithets; the gentleman remonstrates, but the vilifier says: "I admit that I have not the right to interfere with your family affairs—that belongs to yourself; but I have the freedom of speech, and I mean to exercise it, to show up the turpitude of your family, to expose its ignominy, and show that it embraces in its conduct the sum of all villainies." He stands there from day to day, and for a long term of years, and continues his slander and vituperation. There is a crowd of loafers around him to laugh at his insults. You know that that man is saying what he does not believe, and, in fact, knows to be infamously false; yet he continues it merely to gratify these low and mean blackguards, to obtain their votes. Now, I put it to gentlemen, how many years would you allow a man to stand before your door to vilify you in that way? If the man, after bearing it for awhile, went out and cudgelled the slanderer, how many here would blame him? If one-half of what is said in that speech were said by any knave on Pennsylvania avenue against the community, and some one of those assailed should, after awhile, cudgel him, would not everybody, including the preachers and women, say that it was *good for him*? Is there any difference because this thing is done by a senator who is shielded from a suit for slander, or an indictment for libel, by his senatorial privileges? On the contrary, ought not a senator, invested as he is with some extraordinary privileges, to be more scrupulous? I admit that for words spoken in debate in the Senate you cannot bring suit against Mr. SUMNER; but does not that increase his moral guilt?

I must, however, refer to the scene of the delivery of this speech itself. I happened to be in the Senate for half an hour during its delivery. I was there also two years ago, when a similar speech was made. I looked around over the Senate. I saw a body of gentlemen, some forty or fifty in number, many of them high-toned men, with nice sense of honor and delicacy of feeling, sitting quietly, listening to fierce denunciations of themselves, their section, and people, in the grossest language that offensive vituperation and calumny could assume. They bore the infliction not patiently, but still tolerated it without stopping it by its merited chastisement, out of deference to the rules of the Senate, and consideration for the State of the senator, for one, two, and I believe three days on one occasion. It struck me at the time as the most remarkable exhibition of human forbearance ever exhibited in the world. It was a sight never seen in any country but our own, where there is allowed the greatest latitude of speech, and the greatest deference is paid to constitutional rights. Such denunciations would not be allowed in any State legislature. All the members there being of the same State, the man using such language would soon be brought to the point and suddenly stopped.

In the Senate it was different. Owing to the sectional feelings now prevailing, the division of sentiment between the North and the South, senators, rather than risk adding to the ill-feeling already existing between the two sections, felt it to be their duty to sit still, and submit to such outrages in a hall intended for consultation between the representatives of the thirty-one sovereign States. As to the speech itself

it would be preposterous to refer to it as an argument—a mere mockery to speak of it as an oratorical or literary effort. It is a collection of scraps seized and appropriated for their supposed value or beauty, and jumbled together as pearls or counterfeit gems would be by swine. Or rather it reminds me of the fable of the jackdaw that gathered the feathers of various kinds of birds, and put them on to variegate its own dusky coat. The only thing original in that speech is the grossness with which he stains all that he has borrowed; and really I do not know, sir, but that I ought to take that back. Perhaps, if you, Mr. Speaker, and I were to go to the places where such language is used, we might find that the indelicacy and coarseness of the speech, like all else about it, was borrowed. And such a speech was delivered not only in a full Senate, but to a gallery crowded with refined and delicate ladies. Why, sir, in my own section of the country, such language is not used in public discussions, where *men only* are congregated. And if a candidate for the petty office of constable were to indulge in such phrases at a muster-ground, where there was but one old woman selling beer and cakes, he would be silenced at once by those present. It is most extraordinary that any man accustomed to the association of decent persons should have made such an exhibition of himself. I can only account for it on this hypothesis: Mr. Sumner is nearly allied to the school of Garrison and Wendel Phillips, who openly profess to be disunionists, and are making constant efforts to destroy this government. Doubtless Mr. SUMNER entertains the same views, and is desirous of bringing the Senate into disgrace, so as to contribute powerfully to getting the whole government into disrepute, and thereby hasten its overthrow.

The manner, too, of its delivery was in keeping with the speech itself. Whether considered with reference to its impudence and insolence of tone, its gesticulation, and all the accompanying circumstances, it was obviously intended to be as offensive and disgusting as it was possible to make it.

Such a speech, so delivered, was quietly listened to by the Senate, out of respect for one of the States, which he claimed to represent. I may well say that the Senate then exhibited the greatest regard for liberty of speech that it is possible to conceive.

I now recur to the principle already stated, and hold with Franklin, that no man has a right to indulge in vituperation without being liable to be called to account for it. I confess, however, that I prefer the old mode of seeking redress, and that even the duel is less objectionable to me than the resort to summary violence, when it is practicable to do so. I know that there is a great clamor in the country against duelling, and I admit that it is an evil. So is hanging an evil, if you look at the case by itself. So is it an evil to tie a poor devil of a thief to the whipping-post. But these are less evils than the crimes for which they are punishments, and which would be indefinitely multiplied but for such checks. Sismondi was right when he declared that one of the principal means of civilizing modern Europe *was the duel*.

By holding men responsible for their conduct you restrain excesses. Hence forbearance, justice, and courtesy of manner are the results. It is a silly notion of some people that duelling necessarily makes men quarrelsome and overbearing. On the contrary, men of courage are rarely, if ever, abusive, and are generally regardful of the feelings of others. If a man of that sort seeks a difficulty, however, he uses only a single word to effect his purpose. But the men who are fond of vilification and abuse of others are generally craven cowards, who intend at the same time to shelter themselves from responsibility.

I am sorry to say that it is quite a common remark that the Senate of the United States has degenerated; and so it has. When I first came here it was the most orderly and dignified body I ever saw. But four or five abolitionists got into it, who, professing to be non-combatants, nevertheless thought to give themselves consequence at home by denunciation and abuse of their opponents; and as they could not, under the rules, be effectually punished, so as to make them behave like gentlemen, other senators were occasionally tempted to retort in strong language; so that the Senate has got to such a pass, that recently the oldest paper published in this city, alluding to a debate that had taken place one day in that body, said that it was gratifying that nothing personally offensive had occurred. The Senate has been brought

down to that condition that it is thought to be a matter of congratulation if they can debate without excitement and personality for a whole day! Some of these senators say, "I have abused you, and mean to do it when I like; I will not fight you, however, in any way; but, if you attack me, I will defend myself." I must be pardoned for saying that I think that aggravates the offence. Suppose a man villifies me, and says, "I will not fight you on equal terms, but, if you attack me, I will defend myself."

Sir, if I attack him, and he kills me, he goes unpunished; but should I kill him, I must, in law, be held guilty of murder, and whether I escape capital punishment or not, I am seriously injured. A man who has no fear of personal injury in the collision may, nevertheless, well shrink from placing himself in the attitude of a felon. These men say, however, that if attacked, they will *defend their bodies*. So do all animals, from the highest down to the *crawling worm*. When men, therefore, willingly assail others by vituperation, without intending to be personally responsible, they necessarily occupy a most cowardly attitude; but when they declare that they will resist attacks, if made on them, by this pretence to a sort of show of courage, they exhibit the greatest hypocrisy; and when thus they add hypocrisy to cowardice, they have crept down into the lowest, the most contemptible and degraded, position that humanity can descend to.

Such is my opinion, and I stand on it. At the same time, when a man is conscientious, and avoids assailing and abusing other people, he is under no obligations to fight, and in fact rarely, if ever, has a difficulty of a personal character; but, should he be assailed, the law and the whole community are on his side, and he is well protected. But I do say that the man who takes upon himself to denounce and calumniate others, ought to be made responsible in some mode or other—I do not much care how. North Carolina, from which I come, is an old-fashioned State. We are in the habit of punishing men there for crime. We have no penitentiary in the State at all. Some years ago the legislature submitted the question of having a penitentiary to the people, and we voted it down by a large majority. Why? We admitted that some offences ought to be so punished, but we knew that if we got a penitentiary, we should cease to punish criminals capitally for high offences. The result was, that we kept our old common-law system. We hang and whip men there if they deserve it; and the consequence is, I believe, that there is no country in the world where fewer crimes are committed. I am sorry to say that in New England, and some other portions of the country, where the light of the present age is claimed to have made more progress, there seems to be a great sympathy for criminals and offenders. In the earlier ages of every country, men are generally rather indifferent to personal danger, but are tenacious of character, and they prefer the hardy and manlier virtues; but as the country gets older, people become more and more attached to wealth and comfort, and endeavor to protect their bodies while they are more careless about their characters. Already, in portions of the United States, the people are getting into this condition of things, and the consequence is, that there is so much sympathy for criminals now that you can hardly have men properly punished. There are so many means provided for the ease and comfort of criminals, that I suppose it is a temptation to some men to commit crime, as, indeed, the newspapers have in some instances represented.

I am reminded of a ludicrous story which I recollect to have seen in some paper. When a portion of the troops intended for Mexico were being drilled, an old woman, who was looking on, suggested that they ought to have cushions on their weapons, in order that they might not hurt the Mexicans. Well, some of our people have got to cushioning the punishment of criminals to such an extent that the consequence is a great increase of crime.

To the intelligent, and educated, and sensitive man, imprisonment for a long term is perhaps the greatest punishment; but it is not so with the men who commonly commit crimes. It is the dread of death and of corporal suffering that restrains them.

I hold, sir, that while the practice of duelling is objectionable, the prohibition of it by Congress some fifteen years since, as was then done, and the state of public opinion gotten up by that legislation, and the Cilley duel, out of which it grew, have done an immense amount of mischief. There have probably been twenty fights in the two houses of Congress since that time. I suppose every member will admit that it is a greater breach of the dignity of this House for members to have fisticuff fights on the floor, than for them to go out quietly to some place and shoot at each other, whether they hit or miss. If there is any member here who does not agree to that proposition, I am sure he will admit that the general system of vituperation which prevails here, lowering, as it does, the moral tone of the whole country, and diminishing the value of character, is a greater mischief than the occasional loss of a life. I saw it stated in the papers the other day that more than seven hundred persons were killed by lightning during the last year. I have no idea that one-tenth of that number were killed in duels. Thunder-storms are supposed to purify the atmosphere, and duelling has a wholesome, restraining effect sometimes on the public manners and morals. Instead of such a law as Congress did pass, if it touched the subject at all, it would have been far better for it to pass a law, saying that where a man has been guilty of a gross personality, and will not give satisfaction if called upon, he shall be expelled from the House. There would be some show of reason in that, but I am not for either law. If you will pass proper rules to restrain this abuse which is so often indulged in during debates, and put them in force, and punish those who violate them, either by fine or expulsion, then I shall be ready to vote to expel any man who commits a breach of the peace on this floor. But so long as your system tends to en-

courage a systematic course of vituperation and abuse, I hold that assaults and batteries, as lesser evils, are to be tolerated, and even maintain their restraining effects to be wholesome.

Mr. Speaker, I am afraid that we are beginning to lose that regard for character which prevailed at the time Benjamin Franklin wrote. If you compare our publications with those of that day, I think you will find that we place less value on reputation than formerly. It is the interest of a man of bad character to drag down every one else to his own level, just as the negro, who complains of the distinctions of color, would blacken everybody, so as to put all upon a level. It was Duke Chartres, I think, who said that, though he made no pretensions to a good character, he would give twenty thousand pounds for one, because he could make twice that much out of it. But it is the object of bad men to degrade character generally, and thus put all men upon a level with themselves.

To see the effect of this, let us for a moment look at the particular case under discussion. I have known Senator BUTLER for a long while. We live not far apart. I know of no man who has fewer personal enemies, or who is more generally respected as a man of the highest integrity and honor, and of the most generous and amiable nature—indeed he is amiable and generous almost to a fault. He seems to have retained in his bearing and manners very much of the simplicity of the child, with the intellect of the man. Hundreds of thousands of copies of Mr. SUMNER's speech have been circulated against him in the North; and if, a few years hence, he should go into that section, how would he stand, and what would be thought of him? But the circulation of such a speech as this over that section is an injury not only to him, but to the community there. Suppose that hereafter a felon from the penitentiary should be a candidate for the Senate, or for some other office, and his bad character should be brought in charge against him. He might say: "It is true that I am rather a bad man, but look at Senator BUTLER—I am not quite as bad as he is; I can tell the truth sometimes, but he is a man covered with all sorts of infamy, and yet he has been a senator for many years." In other words, the circulation of such libels has a tendency to lower the tone of the public mind, vitiate its taste, and destroy its morals; and I regard that as a greater evil than occasional assaults and batteries. As long as there are men in the world who value character more than life, efforts will be made to resent—by violence, if necessary—assaults on it. Because it is, in a free country, surrounded by perils, it is not the less prized. Indeed, like all else that is valuable, it must at times cost effort to protect it. "The rose is guarded by its thorn; the honey is defended by the bee."

Mr. Speaker, I maintain, then, in the first place, that the gentleman from South Carolina has committed no breach of the privileges of the Senate, the Senate not being in session at the time of the assault. I contend, in the second place, that he did nothing wrong in going into the Senate chamber, so far as the place is concerned. I insist, in the third place, that a senator has no such privilege as puts him on a better footing than any other citizen, as far as protection to his person is concerned from assaults and batteries. If he is beaten, his assailant, like the assailant of any other man, is indictable; he has also the remedy of a civil action for damages; and he has those other remedies to which I have alluded. As to expelling a member for disorderly conduct, that, of course, means such conduct as, when we are in session, interrupts business. But, before I take my seat, I want to say one word on another point. I moved, some days since, to reconsider the vote by which the resolutions of one of the northern legislatures were ordered to be printed, demanding, I believe, that we should expel the gentleman from South Carolina. I recollect, also, that some resolutions came in here from the State of Massachusetts, very denunciatory in their character, and instructing us to expel him forthwith.

Now, I do not mean to say anything against Massachusetts as a State—I am not willing to assail any State; but I must say that the majority of that legislature—I do not assume that they represent the State truly—have placed themselves in an extraordinary position. Why, do not you and I know, sir, that a man cannot be a juror in a criminal case anywhere where the common law prevails, who has expressed an opinion as to the guilt of the accused?

Was it ever heard that any body of men, jurors or judges, could, with propriety, be allowed to pass upon any case which they had prejudged before hearing the evidence? Every member of that Massachusetts legislature who voted for the resolutions would be disqualified from sitting in this case even as a juror, and yet they assume to instruct us forthwith to expel the gentleman from South Carolina. Has the constitution given them any such authority? It is not pretended that it has. The constitution of the United States says we shall be the judges of these matters, and we may punish members for disorderly conduct. Have they any right to instruct us? Suppose we had passed a resolution two years ago, and instructed the Massachusetts legislature to expel a certain notorious member who gave the name of "Hiss" to that legislature, for his misconduct: how would they have received that? And yet we might have said that as the constitution of the United States, and the laws made under it, were to override the constitutions and laws of the States, where they come in conflict, therefore the will of Congress should be superior to that of the Massachusetts legislature. But on what principle is it, I ask, that they can assume to instruct us? We are sitting here as jurors or judges, and they have the modest assurance to send here their orders to direct us. The most remarkable thing of all was, that, in passing this resolution, they do not seem to have said one word about the greatest offence in the transaction—the offence of their own senator

against common decency and the proprieties of the Senate chamber, and of all that is commendable in gentlemanly bearing, and of the direct attempt to degrade the Senate itself to the level of the lowest haunts of blackguards. There are portions of that speech, Mr. Speaker, which I am sure no gentleman here would like to read aloud to his family. But I have already briefly characterized some of its features, and I now forbear.

Is it not singular that this Massachusetts legislature, and the other legislatures that have alluded to this matter, have not referred to this gross crime at all, while they occupy themselves with a petty assault and battery? They strain at a gnat because they have already *swallowed a camel*. They have already been able to swallow this gross offence, and being gorged now, cannot take in a little one. Then look at all these meetings that took place in the North. Not a word was said about that speech. Does this not show an extremely vitiated taste in the getters-up of these meetings? Who is there that would not regard it as a greater evil to be wantonly and grossly aspersed, and have his character to suffer, than to be even stricken unjustly? Will not every one, at least, agree that he who wantonly vilifies another is more criminal than the man who, so assailed, chastises the wrong-doer?

I hold, then, that there is nothing in the case that distinguishes it from the many similar occurrences to which I have alluded, and which the House passed by without even a censure.

As a breach of the law of the District, it is a less offence, considering the great provocation given, than many which have been very lightly punished by the courts.

Nor does it afford ground for excitement in the country. Look back to a case already referred to. A senator from Pennsylvania was, in the midst of his speech, for words then being uttered, violently assaulted by another senator, and yet neither the legislature of his own State, nor that of any other, thought it worth while to say one word about the matter; nor were there any meetings held to denounce or complain of the act.

As to the allegation that the freedom of speech is in danger, the idea is too preposterous to merit refutation. Is there a single member on this floor, or that of the Senate, who pretends that he has been restrained by personal fear, at any time, from saying whatever he desired to say? Is it not, on the contrary, true, that we are all, at times, liable to say too much under the impulse of our feelings, and that we often desire to take back what we have already said? And does any one suppose that either of Mr. Sumner's predecessors in the Senate was ever in the slightest danger of violence for words spoken there? Who ever thought of assaulting Webster, or John Davis, or Everett, or Choate, or Bates, or Winthrop, or, in short, any of the illustrious men with which, in former times, Massachusetts honored the public councils?

I did intend, Mr. Speaker, to have said something about the efforts that are being made in various quarters to create political capital out of this affair. But if I were to do so I would have to refer to matters which are not necessarily connected with this case—to Kansas, to the slave power, the slave oligarchy, and various other things of which gentlemen on the opposite side speak in connection with this action. If I were to refer to these things I should be led astray from the path of duty. The gentleman from South Carolina ought not to be prejudiced by such references. He is entitled to a trial on the merits of his own acts, and should not be a sufferer because others may have been wrong.

These very attempts of the prosecutors to bring to their aid all these extraneous circumstances and prejudices show that they themselves are conscious of the weakness of their cause, and are seeking, therefore, to get such help as they are not entitled to use.

I, and those who concur with me, do not justify assaults and batteries in the eye of the law; but we say they may be excused and extenuated by gross outrages committed against character, and that this was a case of that kind. It should be left entirely, therefore, to the action of the courts, to be punished properly, according to its merits or demerits, by the judicial tribunals of the country.